



Battle Creek Zoning Board of Appeals

Staff Report

Meeting: July 8, 2014
Appeal #Z-01-14

To: Zoning Board of Appeals
From: Glenn Perian, Senior Planner
Date: June 27, 2014
Subject: Petition for a dimensional variance (Z-01-14) to permit the construction of an accessory building 18.5' in height, 4.5' taller than what the Zoning Ordinance allows.

Summary

This report addresses a petition from Karl J. Bell seeking approval of a Dimensional Variance (Z-01-14), to waive the 14' maximum height limitation for accessory buildings located in residential zoning districts for one and two family dwellings on the property located at 244 Calhoun Street. The total height of the proposed building is 21', however, the height of a building is defined in Chapter 1230.06(9) as "...the mean height level between eaves and the ridge for gable, hip, and gambrel roofs". The appellant has submitted a drawing showing the "mid-peak" height of the building being 18.5' tall with the total height of the building being 21' from grade to peak. The proposed building will have 16' walls and will be 28' x 28' in size. The appellant has provided a sketch of the property showing the location of the existing house and proposed accessory building which is attached to the packet of materials you received.



subject property



Legal Description

CHAS MERRITTS ADD W 16.5 FT OF LOT 33, E 11.5 FT OF LOT 34
CHAS MERRITTS ADD E 44.5 FT OF W 54.5 FT OF LOT 34

Public Hearing and Notice Requirements

An advertisement of this public hearing was published in the Battle Creek SHOPPER NEWS on Thursday, June 19, 2014 – not less than the 15 days before the hearing as required by State Law and ordinance.

Notices of the public hearing were also sent by regular mail on June 16, 2014 to 48 property owners and occupants located within 300 feet of the subject parcel. As of the writing of this report, planning staff has not received any comments related to this appeal.

Applicable Zoning Ordinance Provisions

Chapter 1234.04 states:

b) The Board shall have the authority to grant the following variations:

(1) Nonuse. If there are practical difficulties for nonuse variances relating to the construction, structural changes, or alterations of buildings or structures related to dimensional requirements of the zoning ordinance or to any other nonuse-related standard in the ordinance in the way of carrying out the strict letter of the zoning ordinance, then the Board may grant a variance so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice is done. The Board may impose conditions as otherwise allowed under the Michigan Zoning Enabling Act, MCL 125-3101 et seq.; and

(c) Variance Standards. In consideration of all appeals and proposed exceptions to or variations from this Zoning Code, the Board shall, before making any such exceptions or variations, in a specific case, first determine that the applicant has met all of the following conditions as set out for the specific type of variance requested:

(1) Nonuse (dimensional) Variances:

A. When it can be shown that a practical difficulty would, in fact, exist if the strict non-use requirements of this zoning ordinance (e.g., lot area, width, setbacks, building height, etc.) were applied to a specific building project, the Board may grant a variance from these requirements. The practical difficulty from a failure to grant the variance must include substantially more than a mere inconvenience or a mere inability to attain a higher financial return.

B. The practical difficulty must be exceptional and peculiar to the subject parcel of land which do not generally exist throughout the City and may not be self-imposed or the result of an earlier action by the applicant. If the parcel of land could be reasonably built upon in conformance with the requirements of this zoning ordinance by simply relocating or redesigning the structure(s), then a variance shall not be granted.

C. A variance shall not be granted when it will alter or conflict with the intent of this Ordinance considering the public benefits intended to be secured by this Zoning Code and the rights of others whose property would be affected by the allowance of the variance.

D. Any variance granted shall be the minimum necessary to provide relief for the practical difficulty of the applicant.

Analysis and Recommendation

Staff has reviewed the application and finds that it meets the requirements for submittal and is considered complete. The Appellant is requesting a variance from the 14' tall height limitation for accessory buildings that would authorize the construction of an 18.5' tall building at 244 Calhoun Street. The Appellant has stated in the supporting material that the building will be used for the storage and security of personal property. The appellant states that other properties in the area have garages taller than 14'. The proposed building will comply with all other zoning requirements as far as setbacks, size, location, etc. The Appellant has supplied additional reasons supporting the request for appeal and they are included with the application and part of this report. As mentioned earlier in this report, a site plan of existing conditions and for the proposed building has been provided. Additionally, we expect the appellant to be at the meeting to answer any questions you may have related to the appeal.

Findings and Recommendation

The Zoning Board of Appeals can approve, approve with conditions, or deny this request. The Zoning Board of Appeals can also table or postpone the request pending additional information. In consideration of all variations from the Zoning Code, the Board shall, before making any such exceptions or variations, in a specific case, first determine that the conditions listed below are satisfied. Planning staff has reviewed these conditions and we do not believe that each condition can be justified in an affirmative manner. We have provided a rationale for each condition set forth below for Dimensional Variances. Therefore, the Planning staff recommends that the Zoning Board of Appeals deny the Dimensional Variance (Z-01-14) based on the following findings contained in this staff report.

- A) Staff finds that practical difficulty does not in fact exist if the strict requirement of the Ordinance is applied to this specific building project and that the Board is authorized to deny the variance in this case. The practical difficulty from failure to grant the variance will include substantially more than a mere inconvenience in this case. From the information submitted by the Appellant, there is no compelling reason as to why the accessory building could not be built within ordinance standards (or 14' in height).
- B) Staff believes that the practical difficulty is not exceptional and peculiar to the subject parcel and the conditions associated with the property generally exist throughout the City. We do not believe the appellant has provided any compelling reasons as to why the property is any different from those in the neighborhood.
- C) Staff believes that if the variance is granted that the intent of the Ordinance will be altered or that the rights of others will be compromised in that we have not been convinced that the subject property is unique in any way.

D)Staff believes that the variance requested exceeds the minimum necessary to provide relief from any stated practical difficulty in that the request does not state a practical difficulty.



Attachments:

The following information is attached and made part of this Staff Report.

1. ZBA Petition Form (Petition #Z-01-14)
2. Aerial of property and sketch plan of proposed building
3. A quit claim deed for property formerly at 242 Calhoun Street